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In the High Court of Punjab & Haryana at Chandigarh.

Date of decision : 21.12.2007.

Punit Kumar Aggarwal son of Shri Sham Lal Aggarwal,
resident of House No.276, Sector-11, Panchkula.

.... Petitioner

vs

State of Haryana.

.... Respondent.

*Judgment*

**Before : Hon'ble Mr. Justice R.S.Madan.**

Present: Mrs.Anju Arora and Mr.Jagdish Manchanda, Advocates,
for the petitioner.
Mr.P.M.Anand, Additional Advocate General, Haryana.

***R.S.Madan, J.***

This criminal revision has been filed by Punit Kumar Aggarwal, who had been sent up for trial before the learned Judicial Magistrate, Panchkula on the basis of a complaint filed by Parma Nand. The learned Magistrate on May 26,2001 came to the conclusion that there was insufficient ground for framing charge against the petitioner and his other co-accused. They were accordingly discharged. The State went up in appeal against the order of discharge, which was allowed by the learned Additional Sessions Judge, Panchkula on February 20,2002 and it was directed that the case be remanded back to the learned trial Court for framing charge of conspiracy under Section 120-B and also under Sections 467/468/472 and 420 I.P.C. The order of the learned Additional Sessions Judge has been challenged in this revision petition.

The facts of the case are that Puneet Aggarwal (petitioner) held

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a General Power of Attorney of Daya Ram of Railly, who was owner of 20 Marlas of land in Khasra No. 36. After Daya Ram died on January 25,1999, Puneet Aggarwal obtained no objection certificate from the Deputy Commissioner to sell the plot and he gave the wrong dimensions of the property in his application filed for getting no objection certificate. Consequently the no objection certificate also showed these dimensions, which were incorporated in the sale deed executed in favour of Ramesh Kumar and Rupinder Parkash Singla. In the revenue record Khasra No.36 has been shown to be triangular, whereas in the sale deed dated March 10,1999 the plot has been shown as a square one.

According to the learned counsel for the petitioner, the petitioner Puneet Aggarwal, the General Power of Attorney of Daya Ram had executed a sale deed in respect of 10 Marlas out of the holding of Daya Ram on January 6,1999 for Rs.4.80 lacs and the second sale deed on March 10, 1999 also for Rs.4.80 lacs. The dispute was with regard to the second sale deed because Daya Ram died on January 25,1999 before the sale-deed was executed. The sale deed had been executed after obtaining a no objection certificate from the Revenue Department.

It was argued on behalf of the petitioner that the petitioner had no intention to cheat anybody because when he came to know about the death of Daya Ram, he immediately approached Rupinder Parkash Singla, the vendee, and brought the matter to his notice. He informed him that Daya Ram had expired on 25.1.1999 and now he had no power to sell his land on the basis of registered power of attorney dated 26.11.1998. He moved for the cancellation of the sale-deed which was cancelled through Annexure P5 by the Permanent Lok Adalat, Panchkula, vide order dated 9.3.2001 passed

in a suit for declaration. The entire amount was returned to the purchaser Rupinder Parkash Singla.

According to the counsel for the petitioner, it was Rupinder Parkash Singla who was the aggrieved person, to whom the land was sold for consideration of Rs.4,80,000/-. But he did not make any complaint in this regard. None of the legal representatives of Daya Ram felt agitated about the sale of 10 marlas of land executed through registered sale-deed dated 10.3.1999. Hence, all the ingredients for the commission of offence under Sections 467/ 468/472/ 420/120-B IPC were not available to the State to proceed against the petitioner.

Reliance was placed by the learned counsel for the petitioner to *Ajay Mitra vs State of M.P. and others* 2003 (1) RCR (Criminal) 674, wherein it was held that at the initial stage of investigation if no offence is disclosed, the High Court is competent to quash the FIR or complaint. It was also held that guilty intention is an essential ingredient of the offence of cheating and, therefore, to secure conviction *mens rea* on the part of the accused must be established. Reliance was also placed by the learned counsel for the petitioner to *Alpic Finance Limited vs P.Sadasivan* 2001 (1) RCR (Criminal) 756, wherein the Apex Court has taken the similar view.

It is a case where the complainant Parma Nand has no role to play. In case there was any aggrieved person, it was Rupinder Parkash Singla who could have agitated the matter. But, he was satisfied with the return of money as well as bonafide of the petitioner. Learned Judicial Magistrate 1st Class, Panchkula, while discharging the petitioner and other accused has recorded a well reasoned order, whereby the petitioner and other accused were discharged as no case was made out against them.

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It is also pertinent to mention here that proceedings against the co-accused of the petitioner, namely Gulwant Singh Virk Tehsildar, Ajay Kumar Clerk and Harbans Singh Patwari, have already been quashed by this court in Criminal Revision Nos.814 and 1025 of 2002. The case of the petitioner is also on the same footing.

In view of the above discussion, this petition is accepted and the order passed by the learned Additional Sessions Judge is hereby set aside.

21.12.2007. **(R.S.Madan)**
vs. **Judge.**